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*Chief Administrative Officer  
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August 23, 2013

**Ex Parte Filing**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

Re: *Toll Free Service Access Codes*, CC Docket No. 95-155

Dear Ms. Dortch:

On the date of this letter, SMS/800, Inc. provided Julie Veach, Ann Stevens, Michelle Sclater and Heather Hendrickson of the Wireline Competition Bureau with the attached memorandum containing the position of SMS/800, Inc. on the allocation method of toll-free numbers related to the 844 NPA code opening.

If you have any questions concerning this matter, please contact me at 508-315-8046.

Sincerely,



Gina Perini

Copy to:

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## **MEMORANDUM FROM SMS/800, INC.**

### **Executive Summary**

In response to a recent ex parte filed by the 844 Release Coalition (“Coalition”) (“Coalition ex parte”)<sup>1</sup>, SMS/800, Inc. (“Company”) met with representatives of the Coalition to discuss the allocation plan for the 844 Number Plan Area (“NPA”) in our Herndon, Virginia offices on July 18, 2013 to discuss post-code release allocation alternatives. After completing our review of the Coalition’s ex parte and having met with the Coalition representatives who voiced their concerns in our meeting, the Company provides this memorandum.

The Company stands by its allocation methodology as expressed in previous public filings on this matter. We do this not as a matter of corporate policy or an attempt at regulatory advocacy. Our statements here are solely in deference to the constraints inherent in our database and our stated commitment to the industry to meet a future 844 NPA release date on time and without service interruption. The Company has prepared an allocation method for the 844 NPA based over a year’s worth of planning and preparation, and consistent with the allocation methodology ordered by the Commission in the 855 NPA release in 2010. Any changes to this allocation method will require substantial time and investment and will not be in place prior to the forecast exhaust of existing toll-free number resources. In fact, changes to the system at this late date may

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<sup>1</sup> <http://apps.fcc.gov/ecfs/document/view?id=7520930200>. The members of the Coalition are 24-7-365, Inc., 365 Wireless, LLC, 800 Response Information Services, LLC, Airespring, Inc., Allstate Communications, Inc., Astro Companies, LLC, ATL Communications, Beehive Telephone, Inc., Bell Canada, CallSource, Capital Management, LLC, CapitalSource Bank, Cbeyond, Inc., Contact Solutions, Cooperative Communications, CoSpeed LLC, Direct Results, Elite Brands, Emergency Communications Network, LLC, Empire One Telecommunications, Inc., Express Communications, Fractel, LLC, Grande Communications Networks, Inc., Iowa Communications Network, iProbe Multilingual Solutions, Inc., Junction Networks, K.T Communications Inc., LeaseHawk, LLC, Lightyear Network Solutions, LLC, MetTel, Nation Wide 800, National Comptel Network, Inc., Netcarrier Telecom, Network Telephone Services Inc., New Network, Pac-West Telecomm Inc., Point Telecom, Inc., Shepherd Corporation, Sigecom, Soutine Enterprises, TalkPath, LLC, TCO NETWORK INC, Telekenex, Telengy LLC, Telescan, Inc., TeleServices, Inc., THE Telco, Threshold Communications Inc., Unipoint Services, Inc., VBI, VCOM Solutions Inc., Voce Telecom, VOLO, LLC, Voxbeam Telecommunications Inc., VPT, Inc., Warning Communications, Inc., Wiphonica Technologies, Inc.

result in potential interruption to normal business operations and could jeopardize customer access to our database.

### **Background**

The Company would like to emphasize that it works to remain unbiased about which methods of toll-free number distribution the industry desires to be implemented and that the Commission endorses through rulemaking. With the aid of its partner vendors, the Company is the custodian of the Service Management System/800 (“SMS/800”).<sup>2</sup> The Company’s sole function is to maintain the SMS/800 in support of its responsible organization (“RespOrg”) customers, service control point owner/operators (“SCP O/Os”) and all North American consumers of toll-free numbering resources. The Company is bound by terms of its tariff, Commission rules and the constraints of the SMS/800 it currently operates. When solicited by the industry or regulatory authorities for information, the Company responds purely with that in mind.

### **Industry Consensus**

Upon being introduced to the Coalition via its comments and supporting filings on the 844 NPA release posted on the Commission’s electronic comments filing system (“ECFS”) website, the Company researched the total market share of the Coalition in order to better understand the Coalition’s industry representation. The Coalition is comprised of 57 entities that, together, represent approximately 13% of the active RespOrgs in the SMS/800 and entities comprising the Coalition hold market share of roughly 16% of the toll-free number inventory not in the spare pool. Based on this information, it is not clear to the Company that the 844 NPA allocation proposal advocated by the Coalition in its ex parte is representative of the RespOrg community as a whole.

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<sup>2</sup> The database is commonly known as the SMS/800.

Further, when a Coalition representative raised its concerns, consistent with the Coalition ex parte, at a recent SMS/800 Number Administration Committee (“SNAC”) meeting on August 7, 2013, the SNAC declined to act based on differing opinions expressed by SNAC members on the preferred allocation method, in which some members would like to have all numbers acquired at once, while others would like a method more similar to the 855 opening. Since there was no consensus reached among its members, the SNAC determined not to provide comments to the Commission regarding a suggested solution.

### **The Coalition’s Position**

In the Coalition ex parte, the group argues for allocation of the 844 NPA by prohibiting “the Toll Free Number Administrator, [Database Services Management, Inc.] (“DSMI”) from assigning toll free numbers to any RespOrg affiliated by common ownership with another RespOrg which seeks, or has received toll free numbers during the 844 code release . . . .”<sup>3</sup> This argument is consistent with comments filed by that same Coalition in the Commission’s proceeding soliciting comments on the proper method and timing for release of the 844 NPA to the industry and the nationwide consumers of toll-free services.<sup>4</sup>

### **Current SMS/800, Inc. Operational Capabilities for Number Allocation**

As the Commission is aware, the SMS/800 is currently programmed to allocate future toll-free resources by Entity or RespOrg ID and without any consideration of whether or not one ID is affiliated, or controlled via corporate umbrella, with another. The Company has explained its rationale behind this position in both its comments in the Commission’s 844 proceeding and subsequent ex parte filings.<sup>5</sup> The Company is bound

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<sup>3</sup> 844 Release Coalition, Toll Free Service Access Codes, CC Docket No. 95-155, July 15, 2013.

<sup>4</sup> <http://apps.fcc.gov/ecfs/document/view?id=7022310308>

<sup>5</sup> <http://apps.fcc.gov/ecfs/document/view?id=7022310301>;

by its tariff and Commission rules to not only distribute toll-free number resources on a first-come, first-served basis but to do so in accordance with the Commission's rules. The Company depends on multiple vendors to monitor and maintain the SMS/800. Changes to the SMS/800 requires sufficient time and financial investment in order to be altered to suit a regulatory change or system enhancement. Accordingly, well in advance of a major alteration to the database, the Company meets with its vendors and directs them to manage their employee resources, software, hardware, administration and finances towards what the Company believes is the most likely Commission directive, in line with known precedent and the terms of the tariff. In the case of the 844 NPA and associated allocation, we relied on Commission precedent in the 855 NPA allocation process to guide the Company's planning for the 844. This planning, and associated alternations to the SMS/800, began well over one year ago as promulgated in an associated industry document.<sup>6</sup>

#### **Entity Means RespOrg ID; The SMS/800**

In the Coalition ex parte, the commenters referenced an April 6, 2010 letter from Michael Wade of DSMI to the Commission discussing time frames for completion of allocation software supporting the release of the 855 NPA by Entity.<sup>7</sup> By use of the term Entity, Mr. Wade meant the identification of each RespOrg carrying a separate and distinct ID and not those affiliated with others or falling under a generic corporate umbrella. In essence, it was understood in 2010, as it is now, that the terms are synonymous. Further, since the letter referenced completion of these allocation software changes to allocate by RespOrg ID by July 2010, the Coalition makes an assumption that those software changes took only the time between the drafting of the letter in April and

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<http://apps.fcc.gov/ecfs/document/view?id=7520926180>;  
<http://apps.fcc.gov/ecfs/document/view?id=7520927584>

<sup>6</sup> SMS/800, Inc., 800-844 REQ, Issue 1, July 16, 2012, Release 21.0.

<sup>7</sup> See Attachment C, Coalition ex parte.

July to complete. In fact, it is our understanding, after research on the matter, that the software changes for the 855 NPA release were made in a time frame consistent with those required to make the technological changes needed to prepare for the 844 NPA code opening.

The Coalition assumes incorrectly the ease by which changes to the SMS/800 are accomplished. In fact, the Coalition goes so far as to claim that it would be “sufficient to write a short program script, which would be run at the start of each day during the new code release, which sets the limit to ‘100’ for a lead Entity and zero for affiliated Entities.”<sup>8</sup> The Coalition greatly minimizes the work necessary to implement software changes to the SMS/800, including planning, specification, implementation, testing and acceptance, and implementation phases.

The Company does not determine or control market demand for toll-free numbers; it simply provides those numbers to the RespOrg community in accordance with the tariff and the Commission’s rules. In order to stay ahead of unpredictable demand, the Company must act a year or more ahead of any code opening or other major system change based on the best information it has at the time in order to accommodate a future rationing or allocation scheme. Contrary to the Coalition’s claim, it cannot put in place a temporary patch overnight or rely on a manual workaround and assume that it will perform as tasked and satisfy regulatory imposed conditions, especially in the context of an activity as significant as an NPA code opening. The nation’s sole toll-free database cannot and will not depend on a human manipulated spreadsheet.

Further, the Coalition is mistaken in its observation that the 844 NPA can be isolated and worked on without impacting other areas of the SMS/800. All other NPAs and related system development work are affected by any changes made to the SMS/800

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<sup>8</sup> In the 855 NPA opening proceeding, the Commission used the term “RespOrgs” where the Company uses the term “Entity” or the first two characters of the RespOrg ID, e.g., AT for ATX01. The Coalition is stating fact when they assert that the reserve allocation (“WRA”) screen can control the allocation at an Entity level, e.g. AT. However, the existing functionality does not support the allocation to a main RespOrg and all their affiliations in one screen.

and each must be tested to ensure the allocation programming runs smoothly without negatively impacting other areas of the system.

### **SMS/800, Inc. has no Conflict of Interest**

In the Company's comments we have advocated a certain allocation methodology solely on the capabilities related to the SMS/800 and our stewardship of the SMS/800. The Company does not, as the Coalition has alleged, have a conflict of interest in this matter. Other than giving status updates on general number utilization trends and the technological readiness of the SMS/800 for the 844 NPA code opening, the Company's management has not conferred with, nor obtained direction from, its Board of Directors, comprised of representatives of AT&T Inc. and CenturyLink, Inc. and Verizon Communications Inc., in regard to the allocation method associated with the 844 NPA code opening. Further, the Company's operations team has not been unduly influenced in the development, progress or implementation of the 844 NPA code release.

We note that CenturyLink, Inc. commented<sup>9</sup> in the FCC's proceeding on the 844 NPA release; however, it did so in its own capacity as a nationwide telecommunications service provider without conference with the Company.

### **Analysis of the "Affidavit" Solution**

As a solution to accommodate the Coalition's allocation request, it recommends that each RespOrg submit an affidavit whereby each RespOrg would legally swear to a statement of the other companies with which it is affiliated. Failure to do so would result in each unidentified affiliate being prohibited from participating in the allocation scheme. The Coalition then goes on to lay out a process by which the affidavits would be monitored as well as how monetary forfeitures and numbering reservation restrictions would be enforced. Although it is unclear from the Coalition's ex parte, it appears the burden of monitoring these affidavits and reporting violations of any Commission order on affidavits would rest on the shoulders of the Company. The Coalition does not

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<sup>9</sup> <http://apps.fcc.gov/ecfs/document/view?id=7022310354>

provide an explanation of the construct of the affidavit, how it is to be delivered to the RespOrgs, justification for such an affidavit under the Commission's authority, justification of such an affidavit under the tariff, the administration of such affidavits within the SMS/800 or the legal ramifications of enforcement of such provisions to include indemnification should an error occur or other problems created through implementing such a proposal. The Coalition states that these important issues require "details to be worked out . . . ." In the Company's opinion, such details would need to be worked out well in advance of its implementation.

Further, as the Commission is aware, from April 20, 2012 through May 14, 2013, the Company endeavored to receive declarations of affiliation to support the Company's reorganization efforts to expand its membership and Board of Directors to include industry representation.<sup>10</sup> The Company mailed and emailed correspondence, as well as attempted to speak via telephone or live, with the entire RespOrg and SCP O/O community in order to ascertain which parties were affiliated with any other.<sup>11</sup> This project was undertaken in order to ensure that all corporate governance formalities were followed in connection with the proposed future election of industry representatives to the Company's Board of Directors. These efforts elicited a response from 58% of the active RespOrgs. While this response was positive and unprecedented in the amount of respondents and information received, we did not get 100% RespOrg response. Further, the context in which we requested and obtained such information was for corporate governance purposes that were completely unrelated to the 844 NPA code opening, nor did it otherwise impacted a RespOrg or SCP O/O's access to the SMS/800. We also stated that such information would not be publicly disseminated.

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<sup>10</sup> See Petition to Change the Composition of SMS/800, Inc., WCB 12-260, September 13, 2012.

<sup>11</sup> Initial distribution of the letter and associated declaration was sent to the industry on April 20, 2012 with two follow up calling efforts on June 6, 2012 and June 20, 2012. On July 30, 2012 an electronic mail reminder campaign began. On September 28, 2012 and February 22, 2013, SMS/800, Inc.'s CEO, Tom Fitzgerald, reached out by letter to all RespOrgs with a management update and further request for affiliate affidavit. Finally, on May 14, 2013, a final email campaign was undertaken. During all this time, the SMT met with industry leaders at trade shows and other industry conferences to continue to spread the word.



Therefore, the Coalition's belief that the information received in connection with our corporate governance activities can be used as sworn representations or affidavits for the purpose of the 844 NPA code opening is not correct. Even if the representations made by responding RespOrgs were in fact affidavits, and they are not, they were not collected for the purpose of verifying a RespOrgs ability to participate in the 844 NPA code opening or have access to the SMS/800. Any collection of affidavits, or other sworn statements, by the RespOrgs for the purpose of verifying affiliations so that they may participate in the 844 NPA code opening should be implemented independent of the Company's corporate governance activities and with careful process and monitoring to ensure no one customer is negatively impacted or otherwise unfairly prejudiced.

The Coalition also suggested cross-referencing common RespOrg IDs, RespOrg contacts or physical addresses in order to ascertain affiliation. In many cases, that effort will bear fruit. However, in an equal number of cases, it will not. Certain large, nationally recognized RespOrgs do have easily identifiable relationships with the RespOrgs who have fallen under their umbrella through consolidation through mergers or acquisitions; although, we will note that some consolidations may not indicate easily identifiable similarities in contact names, address or other entity information. Some acquired entities maintain independent operations, including contact names and physical addresses. Further, many RespOrgs have unclear relationships with others entities, such as the use of common interfaces. As long as each RespOrg follows the rules set out by the terms of the tariff, there is no reason we would otherwise have any say in how those RespOrgs wish to align themselves. Regardless, if tasked to determine all affiliated relationships, the Company would not take an educated guess or identify most, but not all, of the affiliations as the Coalition implies. It must be an accurate analysis with the diligence to ensure that any affiliates assigned are true and correct, especially in light of the fact that if such assumptions are incorrect, such impacted RespOrg would not be able to participate in the 844 NPA code opening release.

### **SMS/800 Number Administration Committee**

The Coalition ex parte referenced a conversation during a SNAC monthly telephone conference call regarding costs associated with altering the SMS/800 to accommodate the Coalition's allocation request. As a subordinate forum in the Alliance for Telecommunications Industry Solutions ("ATIS"), SNAC is indeed empowered to provide guidance and recommendations for industry solutions to toll-free numbering issues. However, SNAC did not file comments in the 844 NPA proceeding nor has it filed subsequent ex parte communication in the docket. The Coalition, having members who also serve on SNAC, took a statement made by the Company's Vice President of Regulatory Affairs, J.T. Ambrosi, out of context regarding other projects within the SMS/800 and drew a broad and unsubstantiated conclusion regarding the cost of reconfiguring the SMS/800 to allocate toll-free numbers on a company/affiliate level. Mr. Ambrosi, in his statement, was referring to other changes in the SMS/800 performed in the past, or ongoing today, that have "cost millions." It is unfortunate that the Coalition did not note Mr. Ambrosi's follow on statement that indicated that the Company had solicited feedback on cost and timing from all its vendors and was preparing that information for disclosure to the Commission. We predicted, from past experience, that such data would substantiate the Company's previous claim that the changes would not be ready in time for a December 2013 code opening.

### **Level of Effort Estimate**

On July 5, 2013, with extraordinary effort and sensitivity to the need for expedited information, the Company solicited information from its vendors regarding any system changes required to implement the proposals made in the Coalition ex parte, assuming RespOrg affiliations were able to be determined in a diligent manner that ensures neutral access to the SMS/800. These estimates included work effort, costs and timeframes to implement into the SMS/800. The Company received such estimates and applied them to a proxy budget to determine not only the total costs but also the net impact on Company revenue for calendar year. In the aggregate, if the changes were

implemented in this calendar year, the additional cost to the Company is estimated to be \$655,000. However, more importantly, the timeframe to complete these changes is estimated to be at least 18 weeks, commencing when the Company is directed by the Commission to proceed in allocating the 844 NPA in this fashion, formal specifications are drawn up and delivered to the vendors, a formal cost and work proposal is returned to the Company and an associated contract change is executed to the mutual satisfaction of the parties. Accordingly, even with full attention devoted to this project, it would not be ready to support the 844 NPA code opening at any time prior to the first calendar quarter of 2014, at the earliest.

### **Future NPA Code Openings**

On July 18, 2013, representatives of both the Coalition, the Company and the toll-free number administrator (“TFNA”) met at the Company offices in Herndon, Virginia.<sup>12</sup> We believe the dialogue was productive, however, in light of the constraints of the SMS/800 with regard to the 844 NPA code opening discussed herein, the Company explained to the Coalition that, for the 844 NPA code opening, it was only able to offer the allocation methodology used in the previous 844 NPA code opening. However, the Company would like to continue discussing the Coalition’s overall policy position in the context of a future allocation methodology, i.e., the 833 NPA release. Accordingly, the Company recommends that the Commission consider commencing a Notice of Inquiry further investigating industry support whereby future toll-free NPAs are allocated as the Coalition proposes. We believe this issue is worth more detailed scrutiny and comment by the industry. The Commission’s comment process is the ideal forum for which the industry to make its views known.

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<sup>12</sup> Gina Perini, William Carter and J.T. Ambrosi represented SMS/800, Inc. David Greenhaus, Heather Welch and John Evancie of 800 Response, Dale Schneberger of Grande Communications, Alex Macis of Call Source and Aelea Christofferson of ATL Communications represented the Coalition. Erik Chuss of DSMI represented the TFNA.